

EXTENDED SCHOOL YEAR SERVICES



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DEPARTMENT OF EDUCATION

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PRIMER ON THE
PROVISION OF
**EXTENDED
SCHOOL YEAR
SERVICES**

FOR PARENTS
AND EDUCATORS
2008

PURPOSE

The purpose of this document is to provide guidance for South Dakota parents, educators, and administrators regarding the determination and implementation of extended school year (ESY) services for eligible students with disabilities.

Parents of students with disabilities should be provided information regarding ESY to better enable them to be involved in the decision for or against ESY services for their student. This document contains guidance to some of the most commonly asked questions and guidance regarding ESY services.

This document can be found on the South Dakota Web site at: [http//doe.sd.gov](http://doe.sd.gov)

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LEGAL AUTHORITY FOR EXTENDED SCHOOL YEAR SERVICES

The provision for extended school year (ESY) services was first established in federal law by the Individuals with Disabilities Education Act of 1997 (IDEA '97). Prior to that time, the basis for interpretation of ESY requirements was drawn from case law. IDEA '97 did not create new legal standards for ESY services but brought together well-established case law in this area. IDEA 2004 has held the same requirements and standards as implemented in 1997.

IDEA FEDERAL REQUIREMENTS

Extended School Year Services

- (a) *General.*
 - 1. Each school shall ensure that extended school year services are available as necessary to provide free appropriate public education (FAPE).
 - 2. Extended school year services must be provided only if a student's Individualized Education Program (IEP) team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.
 - 3. In implementing the requirements, a school may not—
 - i. Limit extended school year services to particular categories of disability; or
 - ii. Unilaterally limit the type, amount, or duration of those services.
- (b) *Definition.* As used in this section, the term extended school year services means special education and related services that:
 - 1. Are provided to a student with a disability:
 - i. Beyond the normal school year of the school;
 - ii. In accordance with the student's IEP; and
 - iii. At no cost to the parents of the student; and
 - 2. Meet the standards of the State.

(Authority: 20 U.S.C. 1412(a)(1))

The analysis of comments that accompanied IDEA 2004 provides clarification of responsibilities for ESY services. It is the obligation of the school to ensure that students with disabilities who require ESY services in order to receive FAPE

have necessary services available to them. The individualized determination about the need for ESY services is made through the IEP process based upon the unique needs of each student. The right of an individual student with a disability to ESY services is based on that student's entitlement to FAPE.

These guidelines are set up in broad topics and then questions and answers format in order to provide guidance for parents and school staff to implement ESY requirements.

WHY EXTENDED SCHOOL YEAR (ESY)?

The Individuals with Disabilities Education Act gives educators the responsibility for development and delivery of a free appropriate public education (FAPE) to students with disabilities. IDEA defines FAPE as special education and related services that are provided at public expense and are provided in conformity with an Individualized Education Program (IEP).

IDEA FEDERAL REGULATION

Free appropriate public education (FAPE)

As used in this part, the term free appropriate public education, or FAPE, means special education and related services that:

- a) Are provided at public expense, under public supervision and direction, and without charge;
- b) Meet standards of the SEA, including the requirements of this part;
- c) Include preschool, elementary school, or secondary school education in the State; and
- d) Are provided in conformity with the individualized education program (IEP).

(Authority: 20 U.S.C. 1401 (8))

A central issue in FAPE is the IEP team's determination of what services are appropriate. The process used in development of the IEP ensures that students with disabilities have appropriate education planning, based on appropriate

evaluation, to accommodate their unique instructional needs, and that these needs are met in an appropriate learning environment. The IEP process ensures that students with disabilities receive an appropriate education.

Another issue regarding appropriate education is whether the educational program is sufficient to provide meaningful educational benefit. The concept of benefit is an integral part of the IEP process. The IEP team examines a student's present level of educational academic achievement and functional performance development or skill acquisition as well as the student's ability to progress beyond that level if provided with an effective program. If that program results in measurable advancement toward goals that are appropriate for the student, then the student has received an appropriate education because he or she has benefited from his or her schooling. Thus, progress towards goals and documentation of that progress become core concerns in the provision of FAPE.

Some students with disabilities may not receive FAPE unless they receive needed services during time periods when other students, whether they have a disability or not, normally would not be served.

Some students with disabilities may not receive FAPE unless they receive needed services during time periods when other students, whether they have a disability or not, normally would not be served. As part of the IEP process, the IEP team must determine if a student needs a program of special education and related services extending beyond the normal school year. For such a student, restricting services to a standard number of school days per year does not allow development of an education program that is truly individualized. A student may require extended school year (ESY) services in order to receive FAPE.

The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY service are not provided.

Reasons why ESY services may be needed vary from student to student, but the end result is that some students may suffer severe losses of social, behavioral,

communication, academic, or self-sufficiency skills during interruptions in instruction. This is particularly true during long breaks such as summer vacations. Losses suffered by a student may be so extensive that when school resumes, unreasonable amounts of time are needed to recover (recoup) lost skills. Other students may experience losses because they reach critical learning opportunity. For some students, skills that support continued placement in the least restrictive environment (LRE) can be maintained only by ESY services.

The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY service are not provided.

The determination of whether a student with a disability needs ESY services must be made on an individual basis following the IEP process.

DETERMINING NEED FOR EXTENDED SCHOOL YEAR SERVICES

1. WHO IS ELIGIBLE FOR ESY SERVICES?

All students with disabilities who have a current IEP must be considered for ESY services at least annually. To ensure FAPE, the IEP team must consider and document whether ESY services are needed for each student regardless of the student's disability. The school may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. These requirements apply to all students with a disability between the ages of three and 21.

2. WHO DETERMINES THE NEED FOR ESY SERVICES?

Determination of need rests with the IEP team, which must be composed of at least the following individuals: parent(s) of the student, the student if appropriate, general education teacher(s), special education and related

service providers, administrator or school representative, and others as appropriate. IDEA intends that all persons involved in the IEP process be active participants. Each person fulfills an important role by bringing and sharing critical information about the student and his or her need for ESY services.

3. WHAT FACTORS DETERMINE THE NEED FOR ESY SERVICES?

The primary criteria in determining a student's need for ESY services are the *likelihood of significant regression* of previously learned skills during a break in service and limited or *delayed recoupment of these skills* after services resume. The courts have found that the regression/recoupment measures are an integral part of the determination of need for ESY services although they are not the only measures.

In determining significant regression and limited recoupment, it is important to consider the distinction between generalization and maintenance. A loss of skills over time could be due to failure to maintain performance or failure to generalize acquired skills to new settings. Many students do not easily generalize acquired skills to environmental conditions beyond those under which initial learning took place. In terms of interventions, the distinction between maintenance and generalization is essential. Regression may be an indication of either or both.

The courts have also identified a range of factors that must be considered by the student's IEP team when determining the need for ESY services. These factors, alone or in combination, increase the likelihood that a student will experience significant regression and limited recoupment and thus require ESY services.

The IEP team must consider regression/recoupment measures, in addition to all appropriate factors, in determining whether the learning that occurred during the regular school year will be significantly jeopardized if the student is not provided ESY services.

Regression—A decline to a lower level of functioning demonstrated by a decrease of previously learned skills that occurs as a result of an interruption in educational programming.

Recoupment—The ability to recover or regain skills at the level demonstrated prior to the interruption of educational programming.

4. WHAT FACTORS SHOULD BE CONSIDERED WHEN DETERMINING NEED FOR ESY SERVICES?

Schools should use regression/recoupment criteria in determining the need for ESY services, but *a broad range of relevant factors must be considered*. The factors to be considered in making ESY placement decisions shall include, but are not limited to, the following:

a. Category of disability. Students with disabilities requiring consistent, highly structured programs may be predisposed to regression when their services are interrupted. These students may also have limited recoupment capacity.

b. Severity of disability. Although limited recoupment capacity can occur among students with moderate disabilities, it is more likely to be a learning characteristic of students with severe disabilities. Students with the most severe emotional disturbance, for example, are more likely to revert to lower functioning levels or to exhibit inappropriate behaviors, such as extreme withdrawal or anxiety reactions, when their programs are interrupted. For many of these students, each successive interruption in programming and consequential regression also reduces the level of motivation and trust and may lead to an irreversible withdrawal from the learning process. Finally, students with severe disabilities are more likely to have difficulty attaining the goals of self-sufficiency and independence from caretakers and may need additional help and support to reach those goals.

c. Parents' ability to provide an educational structure at home. A parent or guardian may be unable to maintain a student's level of performance during a break in programming because of the complexity of the program, time constraints, lack of expertise, or other factors. This consideration is relevant to whether a student can be expected to regress. Also relevant is the student's stage of mastery of crucial skills or behavioral controls at the point of interruption in programming.

When appropriate, schools should consider offering training to parents to help them maintain their student's level of performance during interruptions in programming. School districts may also consider offering support services in the home, either directly or in cooperation with other agencies, if such services will prevent the student's regression during breaks in programming. Schools are free to use the resources of other public or private agencies in order to meet the student's needs so long as there is no cost or financial liability to the student's parents or guardians.

d. Student's rate of progress. Just as every student's rates of learning, regression, and recoupment are different from that of other students, an individual's rate of learning specific skills or behaviors are particularly essential to meeting the goals of self-sufficiency. For example, basic self-help skills, such as toileting or eating, are essential for minimal independence; stable relationships, impulse control, and appropriate peer interaction are necessary for community living. Therefore, if a student would suffer significant regression in a skill or behavior that is particularly crucial to reaching the goal of self-sufficiency and independence from caretakers, the student requires continuous education programming in that skill or behavior area.

Another relevant concern is the extent to which the student has mastered and consolidated an important skill or behavior at the point when the program is

interrupted. Since behaviors or skills that have not yet been generalized, mastered, and consolidated are more easily lost, a student is more likely to regress in that skill or behavior area if his/her programming is interrupted before mastery and consolidation have been achieved.

Current court cases also include the following factors to be considered in determination of need for ESY services: (1) the student's behavioral and physical problems, (2) availability of alternative resources, (3) the ability of the student to interact with students who do not have disabilities, (4) the areas of curriculum that need continuous attention, and (5) the student's vocational needs.

5. HOW IS THE NEED FOR ESY SERVICES MEASURED?

Determination of the need for ESY cannot be based on a formula. Formulas lack the individualization to ensure that students with disabilities have appropriate educational planning to accommodate their unique needs. Case law supports this conclusion: the determination of need for ESY services cannot be based on a policy that prohibits or inhibits full consideration of the needs for each student with a disability.

The information that is needed by an IEP team to determine *a student's need for ESY services is gathered through ongoing measurement of the student's progress toward the current IEP goals*. An essential component of a student's goals is the method to measure progress. Information can be gathered through a variety of informal and formal measures. Those measures may include a record of daily performance, criterion-referenced and norm-referenced test data, anecdotal records from information collected throughout the year, behavior checklists, or student work samples.

Annual goals are a means of gauging progress and change in knowledge, skill, and behavior that can be reasonably accomplished in a 12-month period. The goals serve as a reference for measuring progress toward meeting goals. When reviewing a student's IEP, the team must consider the student's

progress in meeting goals in terms of regression and recoupment that the student may experience throughout the year. The IEP team's review determines if the learning that has occurred will be significantly jeopardized if ESY services are not provided during an extended break in services. Progress toward meeting goals is monitored on a regular basis through periodic reports given to parents at least as often as all other parents are informed of their student's educational progress. The periodic report includes a description of the student's progress toward meeting each goal. The review clearly specifies how the student's performance at the time of review is different from performance observed at the time the IEP was written, addressing any lack of expected progress toward annual goals and possible regression/recoupment concerns.

As with all other components of the IEP process, parents must be involved in decisions regarding a student's educational progress, including progress toward annual goals. Parents must receive a periodic review of the student's progress toward annual goals and the extent to which that progress is important to the team's consideration of the need for ESY services.

In addition to the valuable information already being gathered to determine progress toward annual goals, a student's IEP team should consider the following points in determining the need for ESY services:

- Consider information from a variety of sources.
- Measurement should be sensitive to small changes that may occur during short breaks in services.
- Measurement information should be gathered during the student's performance after long weekends, vacations, and past summer breaks.
- The team should consider both prior experience with regression/recoupment and predictive information.

In considering evidence of regression, a team should select information that is measurable, with baseline, intermediate, and ending points establishing measurements at predictable intervals. The series of measurements must

embrace the time span including the interruption of services. The minimum points of measurement are

1. at the end of instruction (i.e., the end of the current school year);
2. at the beginning of the subsequent instruction (i.e., the beginning of the next school year); and
3. at the time of recoupment (i.e., the date of regaining skills that had been attained by the end of the previous school year).

A difference in skill attainment following an interruption in services is a measure of regression. Identifying how much time is required for regaining lost skills may require several measurements to determine when recoupment actually takes place.

In addition to these measures, the IEP team must consider the valuable information gathered through observations and input from the family, the student, and educators. This input is critical in developing an accurate and complete picture of the student's level of functioning and to supply information such as regression and recoupment history, performance in the classroom, community-based activities, family circumstances, and recent behavioral and medical problems.

6. WHEN IS REGRESSION / RECOUPMENT CONSIDERED SIGNIFICANT?

Research shows that regression and recoupment occur in all students and will vary across skills, people, and circumstances. The concern is that for some students with disabilities, the regression is so severe and the recoupment period so long that without ESY services, the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided.

IDEA 2004 and court cases do not address the extent of regression / recoupment needed to qualify for ESY services. *The determination of need for ESY is made on an individualized basis* after careful and critical analysis of the ongoing data gathered by the IEP team.

7. IS THE INDIVIDUALIZED EDUCATION PROGRAM (IEP) TEAM REQUIRED TO DEMONSTRATE REGRESSION BEFORE ESY SERVICES ARE PROVIDED?

No. A student cannot be required to fail or demonstrate a lack of progress for an entire year simply to prove need for ESY services. If no empirical data are available on regression, the need may be shown by expert opinion, parent input, or prospective criteria established by the IEP team.

8. HOW OFTEN MUST A STUDENT BE CONSIDERED FOR ESY?

All students with disabilities must be considered for ESY services at least annually.

9. DOES RECEIPT OF ESY SERVICES ONE SUMMER ENSURE SUCH SERVICES THE FOLLOWING SUMMER?

A student's involvement in ESY services one year *does not automatically guarantee ESY services in the following years*. Similarly, the fact that no ESY services were provided in a prior year does not mean ESY services are not needed in the current year. The decision is made on an annual basis.

10. IF A STUDENT DOES NOT MEET ALL OF HIS OR HER IEP GOALS DURING THE REGULAR SCHOOL YEAR, DOES THIS MEAN ESY SERVICES ARE REQUIRED?

ESY services should not be granted solely on the basis of the student with disabilities not achieving one or more IEP goals. The critical questions that each IEP team must ask regarding ESY services is whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

11. IS THE IEP TEAM REQUIRED TO DOCUMENT THE JUSTIFICATION OF THE NEED FOR ESY SERVICES?

After the student's IEP team has completed the discussion regarding ESY, written justification must be provided on the IEP form.

DETERMINING EXTENDED SCHOOL YEAR SERVICES

12. WHEN SHOULD THE IEP TEAM MEET TO DETERMINE ESY SERVICES?

The team must consider the needs for ESY services *at the annual IEP meeting*. However, under some circumstances, the need for ESY services and the characteristics of ESY services may not be known at the time of the annual IEP meeting. In that case, the team can identify the date it will reconvene to determine need and services to be provided. The team may also plan what data should be gathered to assist in making those later determinations. An addendum documenting ESY determinations would then be completed and attached to the current IEP at that later time.

The regulations do not specify a minimum timeline, in terms of how many days in advance of the end of the school year, by which determinations must be finalized. According to the analysis of IDEA regulations, “public agencies are expected to ensure that these determinations are made in a timely manner so that students with disabilities who require ESY services in order to receive FAPE can receive the necessary services.”

The IEP team meeting during which ESY needs and services are determined should be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the break in services. Thus, the IEP document will serve to notify the parents of whatever ESY determinations have been made. As part of the IEP process, the parents are fully informed of their rights and of procedures through which they may question a decision of the IEP team.

13. SHOULD NEW GOALS BE DEVELOPED FOR ESY SERVICES?

No. *ESY services address the maintenance of previously learned skills*, as identified in the current IEP. The intent of ESY services is not to teach new skills.

Therefore, new goals should not be added to a student's IEP for implementation of ESY services.

14. HOW DOES THE IEP TEAM DETERMINE THE AMOUNT OF ESY SERVICES FOR EACH STUDENT?

The determination of the extent of services must be made on an individual basis after a thorough review of the student's goals. The IEP team must determine how much time is needed to ensure maintenance of previously learned skills that would be jeopardized if the student did not receive ESY services.

15. HOW DO THE LEAST RESTRICTIVE ENVIRONMENT (LRE) REQUIREMENTS RELATE TO ESY DECISIONS?

ESY services must be provided only if the student's IEP team determines, on an individual basis and in accordance with IEP requirements, that the services are necessary for the provision of FAPE. "In accordance with IEP requirements" means the team must specify the types and amounts of services consistent with the needs of the individual student with a disability and that student's right to FAPE.

The requirements regarding placement in the least restrictive environment (LRE) during the academic year also apply to ESY. However, "while ESY services must be provided in the LRE, a school is not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the school does not provide services at that time for its students without disabilities." *Thus, LRE considerations for ESY are not identical to LRE considerations that apply during the regular school year.* The full continuum of educational options is usually not available during ESY, and the school is not required to create such a program for that sole purpose.

That same source states that a school is not prohibited from providing ESY services to an individual student with a disability in a non-educational setting if the student's IEP team determines that the student could receive necessary

ESY services in that setting. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the student. The IEP team should consider a flexible service model that takes those needs into account. For some students, the appropriate LRE could be at home with the other family members, receiving only very limited ESY services.

16. WHERE CAN ESY SERVICES BE PROVIDED?

ESY services are intended to minimize the effects of significant regression. Therefore, it is reasonable for ESY services to concentrate on areas at risk for significant regression. Because of this focus, ESY services may differ markedly from the services provided to a student during the school term. Services would logically be modified in a way to enhance generalization and maintenance of skills. As with any IEP, the needs of the student dictate the services rather than any available services dictating what is provided to the student.

Individualized ESY services could be provided in a traditional classroom setting; however, *the location and nature of service delivery can vary with the needs of the student*. Other appropriate service delivery options could include those listed here:

- School-based programs that vary in length of schedule, grouping of students with similar goals
- Intra-school cooperative programs
- A cooperative program with another agency
- Limited student contact, perhaps three to four times during the summer to prevent regression
- A week of intensive review just prior to the beginning of the school year
- Contractual arrangements
- Community-based programs

- Home-based services provided by the parent and supported by school personnel

Some students may need services provided in the home or at an alternative location. Others might benefit most by providing training to the parent in advance of long breaks in regular school schedules. The teacher and parent would work together, with materials sent home and progress periodically monitored by the teacher. Such home consultation prior to vacation and at intervals during vacation, if needed, could provide support and instruction to parents in preventing regression. It offers the additional benefit of increased opportunities for practice and generalization across settings. However, a school cannot simply choose to delegate its responsibilities for providing ESY services to parents. The option of home consultation would depend upon availability of parents throughout the ESY day, their desire to assist, and the complexity of their student's needs, as well as many other factors.

For other students and depending upon the nature of the skill to be maintained, a summer camp, recreational program, or a school's optional summer school program could provide opportunities for maintenance of skills.

RELATED SERVICES

17. MUST THE IEP TEAM CONSIDER THE PROVISION OF RELATED SERVICES AS ESY SERVICES?

Yes. The IEP meeting participants must consider whether the student requires related services, including transportation, in order to benefit from special education.

18. MAY A SCHOOL PROVIDE A RELATED SERVICE AS A SOLE COMPONENT OF ESY SERVICES?

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a student may not need extended school year special education, that student may need extended school year related services in order to benefit from special education when school resumes during the school term. In this instance, *one or more related services may be the sole component(s) of the extended school year program*. The decision as to whether the student should be provided a related service as a sole component of an extended school year program is the responsibility of the IEP team. The team should consider whether, without such ESY related service, there would be regression problems in the student's special education program when school resumes. If a related service is necessary for the student to benefit from special education either during the ESY or regular academic school schedule, that related service must be provided. If a student needs only a related service during ESY, it must be provided.

19. IS TRANSPORTATION PROVIDED AS PART OF ESY?

Transportation is a related service and must be offered if it is necessary for the student to benefit from special education. If necessary, transportation should be added as a related service for the duration of ESY services.

20. WHO CAN PROVIDE ESY SERVICES?

It is necessary to use certified and qualified staff for ESY services. Non-certified staff can be used if they are trained and supervised by certified staff. Staffing options might include supervised practicum students, supervised student teachers, supervised paraeducators, or contracted / purchased services from agencies.

SUMMER SCHOOL

21. IS ESY THE SAME AS SUMMER SCHOOL?

The following table provides a comparison of ESY services and summer school features.

SUMMER SCHOOL	EXTENDED SCHOOL YEAR SERVICES
Definition: An optional or permissive program provided beyond the regular school year. A school may elect whether to operate summer classes.	Definition: Services required by IDEA 2004 are to be provided beyond the traditional school year for any student with a disability who needs special education services and/or related services in order to receive FAPE.
Purpose: Teaching new content or enrichment and/or offering recreational or academic opportunities not present during the regular school year. Students with and without disabilities benefit from additional educational opportunities.	Purpose: Ensuring a student's meaningful progress during the regular school year (FAPE) by maintaining learned skills and preventing loss of critical skills. If services are not provided, student's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping students with disabilities advance in relation to their peers.
Cost: Free or on a fee basis	Cost: Free to parents
Duration: Typically operated on a set schedule for a number of weeks during the summer for all those who participate.	Duration: Schedule, setting, and extent of services designed to meet the individual needs of a student in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.
Location: General education setting; based on needs and interests of all students.	Location: Varies depending upon each student; the IEP has more flexibility regarding location of services.
Eligibility: A student's participation does not depend on a team determination of need.	Eligibility: IEP team determines need and extent of services to meet the unique needs of the student.

22. MAY THE STUDENT'S ESY SERVICES BE PROVIDED IN A SCHOOL'S OPTIONAL SUMMER SCHOOL PROGRAM?

Yes. The summer school setting could offer unique and appropriate opportunities for a student to enhance generalization of skills in a setting very similar to that of the regular school year, as well as provide frequent practice for maintenance of skills. However, ESY services must be tailored to the unique needs of the student and cannot be based solely on availability of services during the summer. The IEP documentation should provide justification of how the summer school program would address the student's IEP needs. The amount and the duration of ESY services cannot be limited arbitrarily to the school's summer school schedule.

It is recommended that special education personnel collaborate with summer school staff, informing them of needed modifications and accommodations based upon the student's needs. The IEP team will determine and document goals to be addressed by ESY services and delivered through summer school programming. Progress reports are required at least as often as those provided to the parents of students without disabilities.

23. WHAT ARE THE RESPONSIBILITIES OF A SCHOOL FOR PROVIDING MODIFICATIONS AND ACCOMMODATIONS FOR A STUDENT WITH A DISABILITY WHO CHOOSES TO ATTEND SUMMER SCHOOL AND IS NOT IN NEED OF ESY SERVICES?

All students with IEPs are entitled to accommodations. Since these students are also eligible under Section 504 of the Rehabilitation Act of 1973, it is best practice to consult with the summer school teachers and inform them of the needed modifications and accommodations as stated in the student's IEP. Under Section 504, a school cannot discriminate against a student with a disability in any program and/or activity offered by that school. The summer school course is a program offered by the school and therefore cannot discriminate against a student with a disability in any program and/or activity offered by that school.

24. HOW DOES AN IEP TEAM DOCUMENT ESY SERVICES?

Documentation of ESY services should specify which IEP goal(s) will be reinforced during ESY services. Documentation should describe the type of services (such as direct instruction, specific related services, consultation, or supervision), the beginning date of services and the ending date of services, the minutes per week or each service, service provider, and where the service will be provided.

PROCEDURAL SAFEGUARDS

25. WHAT ARE THE PROCEDURAL SAFEGUARDS REGARDING ESY?

Parents are entitled to a meaningful opportunity to fully participate in discussion of their student's needs and the development of their student's educational plan, which includes the ESY decision, and they must be fully informed of the ESY determination process.

Because consideration of ESY is a required component of every annual IEP, provision of procedural safeguards and prior written notice of the meeting for the annual development of the IEP constitutes adequate notice of contemplation of ESY services. Prior written notice affords the parents the opportunity to participate in the determination of that decision. *The parents of each student with a disability must be advised at each annual IEP meeting that ESY services are available for those students who are eligible.*

If the parent is not available during an IEP meeting, notice must be sent to them. A copy of the IEP constitutes that notice, documenting the team of determinations. Parents are not required to respond immediately upon receipt of the notice or upon being informed during the IEP meeting. Such notice gives the parents a chance to request reconsideration if the team had determined that ESY is not considered appropriate for their student and to

exhaust administrative remedies if ESY services are not recommended by the IEP team. A case manager would need to respond formally with a written prior notice to any team member's request for reconsideration that is made outside of the IEP meeting. That prior written notice would then provide new meeting information if the team planned to reconvene, or notice of refusal, along with reasons.

26. WHAT PROCESS SHOULD BE FOLLOWED IF THE PARENT DOES NOT AGREE TO THE STUDENT'S RECEIVING ESY SERVICES?

Some parents will decide not to have their student participate in ESY services, even if they qualify. If the family chooses to reject all ESY service options, the team should document this decision. Because compulsory attendance laws do not extend to days beyond the traditional school year, a school cannot compel a student to participate in ESY services.

27. WHAT PROCESS SHOULD BE FOLLOWED IF THE PARENT INITIATES A REQUEST FOR ESY SERVICES OR A CHANGE IN THE EXTENT OF THOSE SERVICES OUTSIDE OF THE IEP MEETING?

If a parent requests reconsideration of need for or extent of ESY services outside of the IEP team meeting, and the team has already made a determination regarding ESY services, then the school must provide prior written notice to the parents documenting either the date and time of a new IEP team meeting to reconsider the request or denial of the request along with reasons for the denial.

SPECIAL CIRCUMSTANCES

28. WHAT IS THE STATUS OF A STUDENT'S ESY SERVICES WHEN THERE IS A DISPUTE OVER PROPOSED SERVICES?

It is important for the IEP team to make decisions regarding the provision of ESY services early enough in the school year to allow parents the time to request administrative remedies when they disagree with a team's denial of

services. If the parents disagree with the decision of the IEP team not to provide ESY services, and the timing of the decision does not allow sufficient time to obtain resolution of the dispute, then it is recommended that the student be provided with ESY services pending the outcome of the dispute resolution process.

Parents need to be given a reasonable amount of time after being notified to express their disagreement with the denial of ESY services. It is recommended that a school develop a policy regarding timelines that are reasonable. It is also recommended that the policy be clearly explained or made known to the parent. If the parents do not provide a timely response, then the school should not be required to provide the student with ESY services pending the outcome of the dispute resolution process or administrative proceedings.

29. HOW ARE ESY SERVICES DETERMINED FOR A STUDENT TURNING THREE OVER THE SUMMER MONTHS?

A student with a disability must receive FAPE no later than his or her third birthday. The IEP or IFSP will specify whether services must be initiated on the student's third birthday for students with disabilities who transition from the Part C to the Part B program, if the student turns three during the summer. The IEP or IFSP developed for a student who will reach age three during the summer must specify the student's program upon the third birthday, including ESY services if needed by that particular student to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.

Measuring the vulnerability of skills acquired by young students is difficult. It is not necessary or advisable to wait until delays occur before providing services to very young students.

When a student with disabilities reaches the third birthday during the summer, necessary personnel may not be available. Therefore, personnel

should ensure that a meeting is held at least 90 days prior to the third birthday while necessary personnel are available. The school must assume responsibility for planning and directly implementing services to be initiated on the student's birthday.

30. CAN STUDENTS WITH DISABILITIES WHO HAVE BEEN PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS RECEIVE ESY SERVICES?

As is true for determinations regarding services for students with disabilities placed in private schools by their parents, determinations regarding the services to be provided, including types and amounts of such services and which students will be served, are made through a consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools. Through consultation, if a determination is made that ESY services are one of the services that a school will offer one or more of its parentally placed disabled students, federal funds could be used for this purpose.

FUNDING

31. HOW IS ESY FUNDED?

If a school determines that a student with a disability requires particular special education and related services, the school is required to provide those services in conformity with an IEP. A school may determine that a student with a disability requires ESY services in order to receive FAPE. Thus, ESY special education and related services qualify for the use of federal funds from IDEA 2004.

ESY services cannot be limited to students who require a minimum number of hours of ESY services. A school may not use budgetary constraint as a reason not to provide a minimum number of hours of ESY services. A school

may not use budgetary constraint as a reason not to provide ESY services to an eligible student. It is expected that each school will plan for ESY expenditures as part of its annual budget since the ensurance of the provision of FAPE is a necessary condition for receiving Part B funds. Any student who requires ESY services in order to receive FAPE must be provided with needed ESY services.

SUMMARY

Extended School Year—15 Pointers

This section contains helpful hints and suggestions for educators and parents. Extended School Year (ESY) is the second most cited noncompliance issue in special education.

Point 1

The time to address ESY is the beginning of the school year and/or when the student is found to be eligible for IDEA. This is the time to discuss regression issues and other factors. Set an early strategy to measure regression.

Point 2

If the school had not addressed ESY, ask the question; be proactive—there are times the school forgets or just doesn't understand the requirement.

Point 3

Remember, ESY services are to maintain skills already acquired, not to learn new skills that would be a nice side benefit. We want the student to remain at baseline. This will help level the playing field. Some students lose skills overnight, during weekends, or while on extended breaks.

Point 4

ESY is not the same as summer school, but some summer school programs could satisfy ESY requirements. Some schools believe if they offer summer school, they are satisfying ESY requirements.

Point 5

ESY must be considered for all eligible students under IDEA, not just students with severe impairments. The number of students needing ESY is usually small; remember, all students regress. State monitoring data indicates that between five percent and 15 percent of students with disabilities qualify, but this can vary from school to school.

Point 6

Not all goals on the IEP need to be addressed during ESY—just those that are suspect for regression or other critical factors. A new IEP is not required for ESY services.

Point 7

Try to encourage the school to set up a measurement strategy to collect data that will help determine whether ESY is needed. There are no “formulas” to determine ESY. The most common methods to determine the need for ESY services are listed below:

- At the end of instruction (baseline)
- At the beginning of instruction (new school year)
- Measuring amounts of regression
- Measuring time to recoup skills
- Implementing instruction and measuring skills learned
- Devising a teacher-made test/ observation
- Administering a post-test after interruption of instruction
- Measuring recoupment rate
 - After Weekend, Christmas break, and/or Spring break
- Teacher and parent input

Point 8

The most difficult issue for the IEP team is to determine when regression is significant. This needs to be determined by the IEP team. The concern is that for some students with disabilities, the regression is so severe and the recoupment period is so long that the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided.

Point 9

A student's involvement in ESY services one year does not automatically guarantee services the following year. All students with disabilities must be considered for ESY services at least annually.

Point 10

The LRE requirements during ESY need to be considered; however, OSEP and the courts allow some flexibility on LRE because of the unique differences between LRE options during the regular school year versus the summer months.

Point 11

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a student may not need ESY special education, that student may need ESY related services in order to benefit from special education when school resumes during the next school year.

Point 12

Extended school year services need to be provided by certified and qualified staff. Noncertified staff can be used to deliver ESY if they are trained and supervised by certified staff.

Point 13

A parent can reject ESY services. The parents could decide on having their student participate in family and community activities during the summer. The

school should document that ESY was offered, but the parent decided against the services (list reasons).

Point 14

There might be a situation where ESY services are implemented by the parents in the home environment. A learning packet could be prepared by the IEP team that addresses the IEP goals that are suspect for regression. Drill and practice from the parents could help maintain skills. The related service of Parent Training could be considered by the IEP team if this option is used.

Point 15

If a student has been found to be eligible for Section 504 services, it would be unlikely they would qualify for ESY. If a student is so severe that they need ESY, maybe they should be considered for IDEA eligibility.

IEP TEAM ESY CHECKLIST

The following is a general checklist and an ESY consideration form that IEP teams might find helpful.

_____ The student has been considered for ESY at least annually by the IEP team.

_____ ESY is considered for all active areas of service on the IEP.

_____ The decision is made by the IEP team and not one individual.

_____ There is a likelihood of significant regression during long interruptions of instruction and/or therapy without ESY, and the rate of probable recoupment of skills will be excessive. (6–8 weeks is average for recoupment after summer vacations.)

_____ Other factors were considered by the team to warrant ESY, including

- ♦ Degree of impairment
- ♦ Opportunities at home
- ♦ Physical issues
- ♦ Other factors identified by the team
- Program interruption
- ♦ Critical life skills
- ♦ Interfering behaviors

_____ The team documented the need for ESY retroactively through

- ♦ Historical data
- ♦ Observations/charting
- ♦ Pre/post-testing

_____ The team identified the need for ESY prospectively by

- ♦ Opinions of team members—This must be documented in writing

_____ No other services are available during the summer to prevent regression.

_____ If the student is eligible, the parent must agree with ESY. Many parents elect for family time, etc.

_____ If the student qualifies, the current IEP is used for ESY.

_____ ESY services can be for only certain goals on the IEP.

_____ Placement and service delivery is determined if the student qualifies. Placement could include home instruction if the parent agrees. Usually, ESY services vary from the regular school year schedule.

_____ If the student does not qualify, the receiving teacher should observe for regression and recoupment during the first quarter of the next school year.

ESY CONSIDERATION

Student: _____ Date: _____

A. Discussion of ESY Considerations _____

B. Eligible for ESY _____ Yes _____ No

C. Reason: (Check)

_____ Serious regression
_____ Degree of impairment
_____ Opportunities at home
_____ Physical issues

_____ Time to recoup skills
_____ Program interruption
_____ Interfering behavior
_____ Critical life skills

D. Justification for ESY _____

E. List Maintenance of Which Skills _____

F. Location of ESY _____
